IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22587 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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SUSHILABEN MANMOHANBHAI SHIVALALBHAI & 4 - Petitioner(s)
Versus
RAMCHANDRA HIRALAL JARIWALA - Respondent(s)

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Appearance :
MRS KETTY A MEHTA for Petitioner(s) : 1 - 5.
MR DIPAK C RAVAL for Respondent(s) : 1,
None for Respondent(s) : 1.2.1, 1.2.2,

1.2.3,1.2.4

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 09/03/2007

ORAL JUDGMENT

1. The petitioners – original defendants have filed this petition under Article-227 of the Constitution of India praying for quashing and setting aside the order passed by the learned Civil Judge (Senior Division), Surat in Regular Civil Suit No.592 of 1999 and seeking direction to allow the present petitioners to file their written statement in Regular Civil Suit No.592 of 1999 before the learned Civil Judge (Senior Division), Surat.

2. The petition was admitted and rule was issued on 22.11.2005. At the time of issuance of rule this Court has observed that the learned trial Judge has relied upon the judgment of the Apex Court in the case of

State of Rajasthan Vs. Jora Ram, reported in AIR 2005 SC 2440. Further there was subsequent judgment in the case of Smt. Rani Kusum Vs. Smt.Kanchan Devi and others, reported in 2005 (5) Scale 545. In view of the subsequent judgment, the Court has admitted the petition and interim relief in terms of para-14(B) was granted.

3. Mrs.Ketty A. Mehta, learned advocate appearing for the petitioners, has submitted the respondent – original plaintiff has filed Regular Civil Suit No.592 of 1999 against the petitioners – original defendants for specific performance of the alleged agreement to sell dated 5.7.1997 and in the alternatively it was prayed in the said suit that on deposit of the remaining amount of sale, Commissioner be appointed to execute the sale deed. In the said suit, summons was issued. It was duly served on present petitioners – original defendants. Initially

an application was moved on 3.5.2001 seeking time to file written statement. The said application was duly granted. Again another application was moved on 15.6.2001, and time was also granted to file written statement. However, third application was moved on 4.7.2001 which was rejected and yet the written statement was not filed.

4. She has further submitted that after rejection of the last application dated 4.7.2001 the suit was taken up for further proceedings on 1.7.2005, when the issues were framed. On behalf of the present respondent – original plaintiff, an affidavit at Ex.34 was filed and the present petitioners – original defendants have availed opportunity of cross-examining the respondent – present plaintiff. At that stage it came to the knowledge of the present petitioners that the written statement was not filed and hence on 19.9.2005 an application was given to reopen

the stage of filing the written statement. Before that, written statement was already filed and hence an application dated 19.9.2005 was filed for reopening the stage for taking the written statement on record.

5. On behalf of the respondent – original plaintiff objection was raised by invoking the provisions contained in Order-8 Rule-1 of the Civil Procedure Code. It was stated that there was no justifiable reason for not filing the written statement in time. It was further contended that the stage was closed since 4.7.2001 and that order has not been challenged. The learned trial Judge, after considering the application as well as the objections raised by the present respondent – original plaintiff, rejected the said application vide his order dated 14.11.2001. It is this order which is under challenge in the present petition.

6. Mrs.Mehta has strongly relied on the decision of the Hon'ble Supreme Court in the case of **Smt.Rani Kusum Vs. Smt. Kanchan Devi and others, reported in 2005(6) Scale 545**, wherein it is observed by the Hon'ble Supreme Court that Order-VIII Rule-1, after the amendment, casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the Court and also does not specifically take away the power of the Court to take the written statement on record though filed beyond the time as provided for. Further, the nature of the provision contained in Order-VIII, Rule-1 is procedural. It is not a part of the substantive law. Substituted Order-VIII, Rule-1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases

causing inconvenience to the plaintiffs and petitioners approaching the Court for quick relief and also to the serious inconvenience of the Court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice buried. The Court has further observed in the said judgment that all the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be

constructed in a manner which would leave the Court helpless to meet extraordinary situations in the ends of justice. The Court further observed that a procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed.

7. Mrs.Mehta has also relied on the judgment of the Rajasthan High Court in the case of **Manik Singh and others Vs. Kumawat Panchayat Mandi, Udaipur and others, reported in AIR 2005 Rajasthan 140**, wherein after considering the facts of the case the Court took the view that in the totality of the facts and in view of the involvement of the public interest in the suit if, the defendants are permitted an opportunity to contest the suit only by taking on record the already filed written statement and counter claim which was filed

as back as in the year 1996, the plaintiffs cannot have any prejudice and at the most they will not have advantage of mere default of the defendants who also have no personal interest in any of the property as the plaintiffs are also pleading that they do not have any personal interest in the property and this is a matter relating to some casts. Therefore, the Court quashed and set aside the order on payment of Rs.2,000/- by the petitioners jointly to the non petitioners.

8. Based on the aforesaid judgments, Mrs.Mehta has urged that the petitioners may be permitted to file their written statement as otherwise it would frustrate their right to defend the suit and justice would be denied to them. She has also taken the Court through the averments made in the written statement. If the written statement is not taken on record, no useful purpose would be served to cross-examine the present

respondent – original plaintiff. She has, therefore, submitted that the impugned order passed by the learned trial Judge deserves to be quashed and set aside.

9. Mr.Dipak C. Raval, learned advocate appearing for the respondent – original plaintiff on the other hand has strongly urged not to grant any relief to the present petitioners nor to direct the trial Court to take the written statement on record. He has submitted that the stage of filing the written statement was closed way back in July 2001 and that order has not been challenged by the petitioners. No justifiable reason is given for not filing the written statement in time. The learned trial Judge has correctly appreciated the relevant provisions of Order-VIII Rule-1 of CPC and case law on the subject and considered the submissions canvassed before him. He arrived at the right conclusion, which cannot be interfered with

by this Court while exercising extraordinary power under Article-227 of the Constitution of India. He has further relied on the decision of the Hon'ble Supreme Court in the case of **Kailash Vs. Nanhku and others, reported in AIR 2005 Supreme Court 2441**. He has invited the Court's attention to paras-40 and 41 of the impugned judgment. The Court observed in para-40 of the impugned judgment that considering the object and purpose behind enacting Rule-1 of Order-VIII in the present form and the context in which the provision is placed, we are of the opinion that the provision has to be construed as directory and not mandatory. In exceptional situations, the Court may extend the time for filing the written statement though the period of 30 days and 90 days, referred to in the provision, has expired. However, we may not be misunderstood as nullifying the entire force and impact – the entire life and vigour – of the provision. The delaying tactics

adopted by the defendants in law Courts are now proverbial as they do stand to gain by delay. This is more so in election disputes because by delaying the trial of election petition, the successful candidates may succeed in enjoying the substantial part, if not in its entirety, the term for which he was elected even though he may loose the battle at the end. Therefore, the judge trying the case must handle the prayer for adjournment with firmness. The defendant seeking extension of time beyond the limits laid down by the provision may not ordinarily be shown indulgence.

10. Based on the aforesaid judgment of the Hon'ble Supreme Court Mr.Raval has strongly urged that the order passed by the learned trial Judge is just and proper and no interference is called for.

11. After having heard the learned advocates

appearing for the respective parties and after having considered the relevant statutory provisions and the case law on the subject, the Court is of the view that there is no dispute about the fact that the written statement was not filed in time. Earlier, time was granted on three occasions and the petitioners had not availed of the said opportunities. Their last application dated 4.7.2001 was specifically rejected. Despite that fact written statement was not filed. It is, however, equally true that from 4.7.2001 to 1.7.2005 the suit was not proceeded with. It appears from the submissions of the learned counsels that in between the suit was changed from one Court to another. It is for the first time in July, 2005 the issues were framed and after framing of the issues the present respondent – original plaintiff has led his evidence through affidavit. At the time of cross-examination, the petitioners came to know

that the written statement was not filed. As soon as this fact came to light, application was moved to file written statement in the month of September, 2005. Before that written statement was already placed on record. Since it was filed late, the same was not taken on record and hence an application was given for condonation of delay. When the question regarding condonation of delay comes, the High Court normally takes liberal view. Here in the present case an application was given for taking the written statement on record. It is admittedly not within the period prescribed under Order-VIII Rule-I of the CPC. However the rule has to be construed as directory and by no stretch of imagination, such rule can be considered as mandatory. It is true that an unscrupulous litigant should not be allowed to take any disadvantage of flouting the provisions of statutes or rules and hence time limit is prescribed. In the

present case, it is an admitted position that for four years nothing has happened in the matter and hence the said delay cannot be attributed to any one. After framing of the issues, within two months, the petitioners have approached to file a written statement. If the petitioners are denied the opportunity of filing the written statement, their defence would not be considered. It would defeat the interest of justice. Hence, considering the judgment of the Hon'ble Supreme Court in the case of **Smt. Rani Kusum Vs. Smt.Kanchan Devi and others (Supra)**, the Court is of the view that if the written statement is ordered to be taken on record by imposing some cost the same would serve the very cause of justice. The decision of the Hon'ble Supreme Court in the case of **Kailash (Supra)** is altogether in a different context. That decision was rendered in the matter of an election petition. In the election petition, prescribed time limit assumes much

importance. If the proceedings are not completed within the time, the elected candidate would complete his term and thereafter the whole suit or petition would become infructuous. In that case Hon'ble Supreme Court has observed that the Court should see that unscrupulous litigant may not take disadvantage of any rule. Here in the present case, as observed earlier, the trial was not commenced till 2005. It is only after framing of the issues in July, 2005 the petitioners came to know about their non filing of written statement and have approached the Court for reopening of the stage for filing the written statement on record. The Court is, therefore, of the view that the respondent – original plaintiff's interest would not be prejudiced if the written statement is taken on record. However, since the petitioners have filed written statement late, the Court would incline to impose some cost, looking to the

facts and circumstances of the case so as to meet with the end of justice. Accordingly, the petitioners are hereby directed to deposit an amount of Rs.5,000/- before the trial Court within two weeks from the date of receipt of writ of this Court or certified copy of this order, which ever is earlier, and on depositing of the cost of Rs.5,000/- the written statement filed by the petitioners shall be taken on record of the suit and the suit will be proceeded further thereafter in accordance with law. On deposit of this amount it will be open for the plaintiff and the trial Court will permit him to withdraw the said amount

12. Subject to the aforesaid direction and observation, the petition is allowed. Rule is made absolute to the aforesaid extent.

(K. A. PUJ, J.)

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